

**Notice of Allowability**

Application No.

10/526,973

Applicant(s)

DELVIGNE ET AL.

Examiner

Art Unit

Bernard E. Souw

2881

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 07/06/2007 (Amendment).
2. ☒ The allowed claim(s) is/are 1-15.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

## **DETAILED ACTION**

### ***Amendment***

1. The Amendment filed 07/06/2007 has been entered. The present Office Action is made with all the amendments being fully considered.

Claims 1-13 have been amended.

New claims 14 and 15 have been added.

Claims 1-15 are pending in this office action.

### ***Claim Objections Withdrawn***

2. Claims 1 and 7 having been properly amended, the previous objections are now withdrawn.

## **ALLOWANCE**

3. Claims 1-15 are allowed.

### ***Reasons for Allowance***

4. The following is an examiner's statement of reasons for allowance:

► Regarding independent claims 1 and 8, the pertinent prior art fails to teach a method or device of measuring the lubricating oil consumption of an internal combustion engine using a radioactive tracer that allows the emitted radiation to be measured continuously, while the engine is in use.

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► Claims 2-7 and 9-15 are also allowed because of their dependencies, either directly or indirectly, upon previously allowed claims 1 or 8.

5. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

#### ***Relevant Prior Art***

6. This prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

► USPAT 3,471,696 issued to Moore et al. teaches a radioactive tracer device/method for the same purpose as the present invention. However, Moore's device or method does not allow the emitted radiation to be measured continuously, while the engine is in use, but only intermittently for a period of 1 minute, as recited in Col.6/ll.53-68 in reference to Fig.4.

► USPAT 5,445,964 issued to Lee et al. teaches a non-radioactive method for the same purpose as the present invention, in which the amount of oil consumption is measured continuously, while the engine is in use. However, Lee et al. do not use radioactive tracer, but determines the amount of oil consumption by laser diode spectroscopy. It is non obvious to one of ordinary skill in the art to combine Lee's invention with Moore's, thus rendering the claimed invention unique.

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► USPGPub 2007/0150161 issued to Dequenue teaches a radioactive tracer device/method which allows the emitted radiation, and hence, also the oil consumption, be measured continuously, while the engine is in use. However, Dequenue's priority date (6/21/2006) is predated by the present application (9/6/2002).

► USPGPub 2006/0237640 issued to Delvigne et al. (the same inventor entity as the present application) also teaches a radioactive tracer device/method that allows the emitted radiation be measured continuously while the engine is in use. However, Delvigne's 2006/0237640 application has a later filing date, and furthermore, is dedicated to a different purpose (i.e., for determining engine damage). Although an Obviousness Double Patenting (ODP) may still be applicable, due to the later filing date and the different claim preamble, such an ODP is not issued in this office action. A note has been attached to the 2006/0237640 application (SN 10/539374), in order to allow the ODP issue be better explored.

### ***Communications***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bernard E Souw, Ph.D., whose telephone number is 571 272 2482. The examiner can normally be reached on Monday thru Friday, 9:00 am to 5:00 pm..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Kim can be reached on 571 272 2293. The central fax phone


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number for the organization where this application or proceeding is assigned is 571 273 8300 for regular communications as well as for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571 272 5993.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

bes  
July 13, 2007



**ROBERT KIM**  
**SUPERVISORY PATENT EXAMINER**